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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/712,901	11/14/2003	Ku Long Lin	92111	9447

7590 01/31/2005

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EXAMINER	
ESTREMSKY, GARY WAYNE	
ART UNIT	**PAPER NUMBER**
3676	

DATE MAILED: 01/31/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/712,901	LIN, KU LONG	
	Examiner	Art Unit	
	Gary Estremsky	3676	

-- *The MAILING DATE of this communication appears on the cover sheet with the correspondence address* --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *20 December 2004*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-3* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-3* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *14 November 2003* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

1. Claims 1-3 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 has several grammar, usage, and/or missing words problems whereby the scope and meaning of the claim cannot be reasonably determined. In the preamble for example is required, "A latch handle device which be installed on a frame structure of a screen door" is grammatically incorrect. The term "be" is positive recitation of the condition, equivalent in meaning to –is installed on a frame structure-- and thereby includes the "frame structure" as part of the invention. However, since either the verb tense is wrong or there is missing words, it is not clear if the limitation should have been –which can be installed,... -- which would have Indicated that the "frame structure" is recited functionally only and not included as part of the invention. Other punctuation, grammar, or missing words at lines 12-19 lead to other uncertainties as to what is being claimed. Among other problems, it is the examiner's position that the claim cannot be interpreted as requiring the handle, base, positioning plate, twist block, and spring all to be in an assembled position and rotatable 360-degrees as

argued by Applicant. The limitations of the claim must be interpreted literally, 'as best understood', and as broad as is reasonable. Claims in a pending application should be given their broadest reasonable interpretation. In re Pearson, 181 USPQ 641 (CCPA 1974).

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. As best understood, claims 1-3 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Pat. No. 2,733,089 to Grevengoed.

Grevengoed '089 teaches Applicant's claim limitations including : a "handle" - 8, having a "lever" - 78, "holder unit" - including 77, a "base" - including 6,7, "having an assembling space" - the space therebetween, a "wall of said assembling space being formed of two flanges" - 52,58 form a wall on left side of the space as shown in Fig 1, a "positioning plate" - 30 where limitation of "assembled with" is broad enough to include intermediate connecting elements within a larger assembly, a "twist block" - 54, "torsion spring" - 59. As regards functional recitation of last three lines of claim, it seems apparent that the handle and base of the reference can be rotated/moved relative to each other in any way desired "before being installed, particularly before insertion of part 5.

Regardless, it's noted that the handle could be inserted into part 7 and rotated any amount (including "360-degree rotation") prior to installation of part 5,40. The limitation does not actually define any particular structure that might be relied upon to patentably distinguish from well known structure of the prior art. See MPEP 2114. But furthermore, as written, the limitation does not require the handle and base to be assembled to each other (so long as it is prior to their being installed on a frame structure) as part of their capability to be rotated. In that respect, the limitation is phrased broadly. It has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. *Ex parte Masham*, 2 USPQ2d 1647 (1987).

As regards claim 2, the walls of part 7 are connected by generally perpendicular elements and are at different elevations whereby broad limitation does not clearly define therefrom. The law of anticipation requires that a distinction be made between the invention described or taught and the invention claimed. It does not require that the reference "teach" what the subject patent teaches. Assuming that a reference is properly "prior art," it is only necessary that the claims under consideration "read on" something disclosed in the reference, i.e., all limitations of the claim are found in the reference, or "fully met" by it. *Kalman v. Kimberly-Clark Corp.*, 218 USPQ 789.

As regards claim 3, no particular orientation of other recited claim elements prevents reading part 58 as the "bottom side of the twist block" and

parts 55,56 as "stop plates" where no particular structure is defined by that recitation that might be relied upon to patentably distinguish from the structure of the prior art.

Response to Arguments

4. Applicant's arguments have been fully considered but they are not persuasive. Much like the present invention, it appears that presence or non-presence of shaft 5 in the prior art determines whether or not the handle can rotate 360 degrees with respect to the base and no whether or not he base is mounted to a frame structure. It appears that Applicant relies most heavily on the limitation of the last three lines of claim 1 to patentably distinguish from the prior art. However, the limitation is broader than argued because it only specifies a capability of two of the structures comprising the present invention when used in a specific way and does not specifically define any structure that can be relied upon to patentably distinguish from similar structure of the prior art that can inherently be used in a similar way to achieve the broadly-recited function. It has been held that the recitation that an element is "capable of" performing a function is not a positive limitation but only requires the ability to so perform. It does not constitute a limitation in any patentable sense. *In re Hutchison*, 69 USPQ 138.

Conclusion

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gary Estremsky whose telephone number is 703 308-0494. The examiner can normally be reached on M-Thur 7:30-6.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tom Will can be reached on 703 308-3870. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Gary Estremsky
Primary Examiner
Art Unit 3676